Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM 1973

No. 73-938

COX BROADCASTING CORPORATION AND THOMAS WASSELL,
Appellants,

vs.

MARTIN COHN,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

APPENDIX

Appeal Docketed December 17, 1973
Jurisdiction Postponed February 19, 1974

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CHRONOLOGICAL LIST OF IMPORTANT DATES

1. May 8, 1972—Complaint filed in the Superior Court of Fulton County.
2. June 7, 1972—Answer of Defendants Cox Broadcasting Corporation and Thomas Wassell filed in the Superior Court of Fulton County.
3. July 13, 1972—Plaintiff Martin Cohn's Motion for Summary Judgment filed.
4. July 13, 1972—Affidavit of John A. Nuckolls filed.
5. August 14, 1972—Defendants' Affidavit of Thomas Wassell in Opposition To the Plaintiff's Motion for Summary Judgment filed.
6. August 14, 1972—Motion of Defendants Cox Broadcasting Corporation and Thomas Wassell for Summary Judgment filed.
7. August 14, 1972—Motion of Defendants Cox Broadcasting Corporation and Thomas Wassell to Strike the Affidavit of John Nuckolls filed.
8. August 14, 1972—Response of Defendants Cox Broadcasting Corporation and Thomas Wassell to Plaintiff's Motion for Summary Judgment filed.
9. September 29, 1972—Plaintiff's Affidavit of Martin Cohn in Support of His Motion for Summary Judgment filed.
10. October 2, 1972—Plaintiff's Amended Affidavit of John Nuckolls in Support of Plaintiff's Motion for Summary Judgment filed.
11. October 5, 1972—Plaintiff's Amended Motion for Summary Judgment filed.
12. October 24, 1972—Motion of Defendants Cox Broadcasting Corporation and Thomas Wassell to Strike the Affidavit of Plaintiff Martin Cohn filed.

13. October 24, 1972—Motion of Defendants Cox Broadcasting Corporation and Thomas Wassell to Strike and to Renew Their Motion to Strike the Original and the Amended Affidavits of John Nuckolls filed.
14. October 24, 1972—Amendment to Answer of Defendants Cox Broadcasting Corporation and Thomas Wassell filed.
15. December 13, 1972—Order of the Fulton County Superior Court on Motion for Summary Judgment filed by said Plaintiff and said Defendants filed.
16. December 22, 1972—Defendants' Motion to Reconsider filed.
17. December 29, 1972—Order of the Fulton County Superior Court Upon Hearing of Defendants' Motion to Reconsider filed.
18. December 29, 1972—Certificate of Appealability of Order Upon Hearing of Defendants' Motion to Reconsider filed.
19. January 9, 1973—Notice of Appeal to the Supreme Court of Georgia filed.
20. September 5, 1973—Opinion of the Supreme Court of Georgia filed.
21. September 5, 1973—Judgment of the Supreme Court Affirming in Part and Reversing in Part with Directions Entered.
22. September 14, 1973—Motion of Appellants Cox Broadcasting and Thomas Wassell for Rehearing filed.
23. September 19, 1973—Opinion of the Supreme Court of Georgia on Motion for Rehearing filed.
24. September 19, 1973—Judgment of the Supreme Court of Georgia Denying Appellants' Motion for Rehearing Entered.

25. December 6, 1973—Notice of Appeal to the United States Supreme Court filed.
26. December 17, 1973—Appeal Docketed in the United States Supreme Court.
27. February 19, 1974—Jurisdiction Postponed to the Hearing on the Merits by the United States Supreme Court.

COMPLAINT

(Filed May 8, 1972)

Now comes the Plaintiff in the above-styled Complaint and respectfully shows the following:

ONE

The Defendant, Cox Broadcasting Corporation is a Corporation established under the laws of the State of Georgia with its principal office located at 1601 West Peachtree Street, N. E., Atlanta, Fulton County, Georgia. J. Leonard Reinsch has been designated as the person upon whom service of process may be perfected. The Defendant is therefore subject to the jurisdiction of this Court.

TWO

The Defendant Thomas Wassell is a resident of DeKalb County, Georgia and may be served by a second original of this Complaint.

THREE

On April 10, 1972 and on April 11, 1972, the Defendants willfully, wrongfully, deliberately, and unlawfully caused to be televised and did televise in two newscasts the name of Cindy Cohn, also known as Cynthia Leslie

Cohn the victim of a rape and attempted rape, and the daughter of the Plaintiff herein, contrary to Ga. Code Ann. §26-9901 (Acts 1968, pp. 1249, 1335) thereby disseminating to the public the identity of a female who was raped and upon whom an assault with intent to commit rape was made.

FOUR

On April 10, 1972 and on April 11, 1972 the Defendants willfully, or recklessly or negligently caused to be televised and did televise in two newscasts the name of Cindy Cohn, the victim of a rape and attempted rape and the daughter of the Plaintiff herein, thereby disseminating to the public the identity of a female who was raped and upon whom an assault with intent to commit rape was made.

FIVE

As a result Plaintiff's right to privacy has been invaded and he has suffered great humiliation, pain and suffering of body and mind, has been prevented from transacting his business in a normal manner, and his peace and happiness of mind have been destroyed.

WHEREFORE, Plaintiff demands the following:

1. Judgment for damages against Defendant Cox Broadcasting Corporation or Defendant Thomas Wassell, or both in the sum of $1,000,000.00 and costs.

2. That the Court temporarily restrain Defendant Cox Broadcasting Corporation and its officers, agents or employees from doing any act that would destroy, erase, mutilate or in any way dispose of the video tape recordings of the newscasts referred to herein and to deliver to the Court as quickly as possible but not later than May 11,

1972 the said video tapes to be held and impounded by the Court as evidence until further order or final disposition of this Complaint.

Zachry & Land
By /s/ Stephen A. Land,
Attorney for Plaintiff

1704 Fulton National Bank Bldg.
Atlanta, Georgia
577-6072

(Summons Omitted)

(Caption Omitted)

ANSWER OF DEFENDANTS COX BROADCASTING CORPORATIONS AND THOMAS WASSELL

(Filed June 7, 1972)

COME NOW COX BROADCASTING CORPORATION and THOMAS WASSELL, defendants in the above-styled action, and make and file this their answer to plaintiff's complaint and respectfully show the Court the following:

FIRST DEFENSE

Plaintiff's complaint fails to state a claim against defendants upon which relief can be granted.

SECOND DEFENSE

1.

Defendants admit the allegations of paragraph one of plaintiff's complaint.

2.

Defendants admit the allegations of paragraph two of plaintiff's complaint.

3.

Answering the allegations of paragraph three of plaintiff's complaint, defendants admit that they caused to be televised and did televise a newscast at approximately 6:00 P.M. on April 10, 1972 and at approximately 12:15 A.M. on April 11, 1972, wherein the name of the said Cynthia Cohn was mentioned once and defendants further admit that the said Cynthia (Cindy) Leslie Cohn was the daughter of plaintiff and was the purported victim of a rape and attempted rape; defendants deny that the said newscasts televised on April 10, 1972 and April 11, 1972, were televised or caused to be televised wilfully, wrongfully, deliberately, unlawfully or contrary to Ga. Code Ann. §26-9901; defendants further aver that in televising or causing to be televised the said newcasts wherein the name of the said Cynthia Cohn was mentioned, defendants were reporting on the public trial of the six youths indicted by the Grand Jury of Fulton County, Georgia, for the murder and rape of the said Cynthia Cohn, the trial having been conducted at the Fulton County Courthouse before the Honorable Judge Sam Phillips McKenzie on April 10, 1972, and in so reporting defendants' actions are privileged in that the said newscasts were fair and honest reports of the said judicial proceedings, of matters emanating from information received through an official investigation by police authorities, and of a matter of public or general concern, and accordingly, defendants are not liable in any manner or for any reason whatsoever for causing to be televised or for televising the said newscasts on April 10, 1972 and on April 11, 1972; defendants deny each and every

allegation of said paragraph which has not herein been expressly admitted.

4.

Answering the allegations of paragraph four of plaintiff's complaint, defendants admit that they caused to be televised and did televise a newscast at approximately 6:00 P.M. on April 10, 1972 and at approximately 12:15 A.M. on April 11, 1972, wherein the name of the said Cynthia Cohn was mentioned once, and defendants further admit that the said Cynthia (Cindy) Leslie Cohn was the daughter of plaintiff and was the purported victim of a rape or attempted rape; defendants deny that the said newscasts televised on April 10, 1972 and on April 11, 1972 were televised or caused to be televised wilfully, recklessly or negligently; defendants further aver that in televising or causing to be televised the said newscasts wherein the name of the said Cynthia Cohn was mentioned, defendants were reporting on the public trial of the six youths indicted by the Grand Jury of Fulton County, Georgia, for the murder and rape of the said Cynthia Cohn, the trial having been conducted at the Fulton County Courthouse before the Honorable Judge Sam Phillips McKenzie on April 10, 1972, and in so reporting defendants' actions are privileged in that the said newscasts were fair and honest reports of the said judicial proceedings, of matters emanating from information received through an official investigation by police authorities, and of a matter of public or general concern, and accordingly, defendants are not liable in any manner or for any reason whatsoever for causing to be televised or for televising the said newscasts on April 10, 1972 and April 11, 1972; defendants deny each and every allegation of said paragraph which has not herein been expressly admitted.

5.

Defendants deny the allegations of paragraph five of plaintiff's complaint; defendants further aver that their actions in televising or causing to be televised the said newscasts on April 10, 1972 and on April 11, 1972 did not in any way invade any purported right of privacy of whatever nature, if any there be, allegedly possessed by plaintiff, the existence of which defendants deny, and further aver that defendants' alleged acts were not the direct or proximate cause of any alleged injury to the plaintiff, if any there be.

THIRD DEFENSE

Defendant Cox Broadcasting Corporation is licensed as a television station (WSB-TV) by the Federal Communications Commission and under the terms of the Federal Communications Act it is obligated to conduct itself in the public interest by impartially reporting newsworthy events, the indictment of the six youths indicted by the Grand Jury of Fulton County, Georgia, for the murder and rape of the said Cynthia Cohn and the subsequent trial at the Fulton County Courthouse before the Honorable Judge Sam Phillips McKenzie on April 10, 1972, being such a newsworthy event, and defendant Thomas Wassell, being an employee of defendant Cox Broadcasting Corporation, is likewise obligated to conduct himself in the public interest by impartially reporting such newsworthy events.

FOURTH DEFENSE

Defendants are not liable in any manner or amount to plaintiff, and defendants further show that their televising or causing to be televised the said newscast on April 10, 1972 and April 11, 1972, was for the sole purpose of truthfully reporting to the public a newsworthy event

in fulfillment of their duty to the public and the same being privileged.

FIFTH DEFENSE

Defendants' actions in televising or causing to be televised on April 10, 1972 and on April 11, 1972, the said newscast relating to the trial of the six youths indicted by the Grand Jury of Fulton County, Georgia, for the murder and rape of the said Cynthia Cohn, the same being a matter of public or general concern, are protected and privileged under the First and Fourteenth Amendments to the Constitution of the United States, Article I, Section I, Paragraph XV of the Constitution of the State of Georgia, and Ga. Code Ann. §§105-704, 709(4), which afford defendants the privilege to disseminate to the public fair and honest reports pertaining to judicial proceedings, to matters emanating from information received through an official investigation by police authorities, and to matters of public or general concern, and accordingly, defendants are not liable to plaintiff in any manner or for any reason whatsoever.

SIXTH DEFENSE

Defendants' actions in televising or causing to be televised the said newscast on April 10, 1972 and on April 11, 1972 are not violative of Ga. Code Ann. §26-9901 and no civil cause of action predicated on such an alleged violation lies against defendants in that the said statute is a criminal statute and provides only that violation thereof is to be punished as for a misdemeanor, such punishment being the exclusive sanction imposed under said statute, and accordingly, plaintiff has no right of action in this cause.

SEVENTH DEFENSE

Defendants neither had nor have any malice toward plaintiff or plaintiff's deceased daughter, Cynthia Cohn, and, in televising or causing to be televised the said newscast on April 10, 1972 and on April 11, 1972, relating to the trial of the six youths indicted by the Grand Jury of Fulton County, Georgia, for the murder and rape of the said Cynthia Cohn, defendants, at all times, acted in a fair, reasonable and diligent manner to obtain the facts related thereto and to report fully and truthfully a matter of public concern.

EIGHTH DEFENSE

Plaintiff is not in anywise entitled to any of the relief sought as against defendants in this cause.

WHEREFORE, defendants COX BROADCASTING CORPORATION and THOMAS WASSELL, respectfully pray for judgment dismissing plaintiff's complaint, with costs set against plaintiff, and that they have such other and further relief as may be just and equitable in the premises.

King & Spalding
/s/ Kirk M. McAlpin
/s/ John A. Pickens
Attorneys for Defendants Cox Broadcasting Corporation and Thomas Wassell

2500 Trust Company of Georgia Building
Atlanta, Georgia 30303
Tel: (404) 577-5350

(Certificate of Service Omitted)

(Caption Omitted)

MOTION FOR SUMMARY JUDGMENT OF MARTIN COHN

(Filed July 13, 1972)

Comes now the Plaintiff, Martin Cohn, and moves this Court pursuant to Ga. Code Ann. §81A-156 (Ga. Laws 1966, pp. 609, 660; pp. 226, 238) for Summary Judgment in his favor on the following grounds:

There exists in this case no genuine issue as to any material fact other than the amount of damages; therefore the Plaintiff is entitled to a judgment as to liability as a matter of law.

Zachry & Land
By: /s/ Stephen A. Land

1505 Fulton Nat'l Bank Bldg.
Atlanta, Georgia 30303
577-6072

(Certificate of Service Omitted)

(Caption Omitted)

AFFIDAVIT OF JOHN A. NUCKOLLS

(Filed July 13, 1972)

Personally before me, the undersigned attesting officer, appeared John A. Nuckolls, who upon being first duly sworn, deposes and states the following:

ONE

Affiant makes this Affidavit in the above entitled action to be used as evidence on behalf of the Plaintiff in any hearing or motion, including summary judgment and for any other lawful purpose.

TWO

Affiant is a resident of 6429 Cherry Tree Lane, Atlanta, Georgia and was employed by Fulton County, Georgia as an Assistant District Attorney for four and one-half years from January 10, 1968 until June 30, 1972.

THREE

In February of 1972, Affiant was assigned to handle the prosecution of Peter Manchee, Ronnie Longo, Bruce Howard, Joe Thompson, Craig Wozniak and Bobby Ray King, all of whom had been indicted by the Fulton County Grand Jury for the crimes of Rape and Felony Murder of Cynthia Lesley Cohn, a female of the age of seventeen years.

FOUR

On April 10, 1972 the above referred to Defendants were arraigned before Judge Sam Phillips McKenzie of the Fulton Superior Court who agreed to affiant's motion of nolle prosequi to the felony murder indictments.

FIVE

After disposing of the murder indictments as stated above, each Defendant was separately arraigned on the charge of rape and, after a lengthy hearing, Judge McKenzie accepted pleas of guilty of rape from Peter Manchee, Craig Wozniak and Bruce Howard, and pleas of guilty to attempted rape from Ronnie Longo and Bobby Ray King.

SIX

Present during the foregoing proceedings were representatives of WSB Television, including Thomas Wassell.

SEVEN

Shortly after 6:00 P.M. on April 10, 1972, following sentencing of the aforementioned Defendants, WSB Television gave television coverage, personally witnessed by Affiant, in which the said Thomas Wassell appeared on the steps of the Fulton County Courthouse and related the circumstances of the proceedings before Judge McKenzie described above.

EIGHT

In the said broadcast, Affiant personally heard Thomas Wassell, who is a Defendant in this case, state that the Defendants had pled guilty to raping a 17 year old North Springs girl by the name of Cindy Cohn.

NINE

Immediately following the said telecast Affiant received a telephone call from Mr. Martin Cohn, Plaintiff in this case and the father of Cindy Cohn, the victim of the rape mentioned by name on the said telecast. Mr. Cohn appeared to Affiant to be nearly hysterical and his voice seemed almost uncontrollable. He asked Affiant whether something could be done to stop the telecast and made the comment several times that "this is killing me, this is killing me."

TEN

Affiant assured Mr. Cohn that the telecast was hopefully an oversight and that certainly the comments would be edited and reference to his daughter Cindy deleted on subsequent telecasts.

ELEVEN

Affiant watched the telecast of the Academy Awards until approximately 12:15 A.M. on April 11, 1972 and observed, at about 12:15 A.M. the late news telecast on WSB Television, during which the same broadcast by Thomas Wassell was repeated, including the name of Cindy Cohn, victim of the aforementioned rape.

TWELVE

The following morning, on April 11, 1972 Affiant personally saw Thomas Wassell in the Chambers of Judge Sam Phillips McKenzie in the Fulton County Courthouse. Affiant asked the said Thomas Wassell if he had purposely used Cindy Cohn's name, pointing out to him that his actions were in violation of Georgia law. Mr. Wassell replied that the name had already been released to which Affiant replied that to his knowledge it had not been publicly disseminated.

THIRTEEN

Upon telling Mr. Wassell that the name of Cindy Cohn had not been publicly disseminated he appeared to be greatly concerned and stated he was leaving to see his attorneys immediately.

FOURTEEN

Affiant had the opportunity to see and observe Martin Cohn on numerous occasions, both before and after the telecasts of April 10, 1972 and April 11, 1972, and Affiant states that although Mr. Cohn was upset and heartbroken about the tragedy to his daughter before the said telecasts it was always possible to communicate with him rationally. After the telecasts, it became extremely difficult for Affiant to communicate with Mr. Cohn. In discussions concerning the disposition of the charges against the remaining Defendant, Mr. Cohn was extremely upset and concerned over the possibility of similar publicity developing at the trial. Because of his obvious and expressed apprehension of a repeat of such telecasts, discussions concerning alternatives in the case were conducted with the greatest of difficulty. During these discussions Cohn constantly expressed concern there would be further publicity if a trial were the result, rather than recommending a plea to a lesser sentence. He stated that his wife urged asking Affiant to accept a plea to terminate all cases, and end the publicity. He further stated with great emotion that he was torn between seeking justice for his daughter or the well being of his family.

Shortly after the release of Cindy Cohn's name as the victim in the case, Martin Cohn contacted Affiant relative to telephone calls which he described as obscene and inhumane. He expressed concern for his family over these calls. Affiant suggested that a non-disconnect device could be installed to trace the calls but he said he would just rather leave home with his family than answer any more.

/s/ John A. Nuckolls

Sworn to and subscribed before me this 11th day of July, 1972.

/s/ Linda B. Sinclair

(Caption Omitted)

DEFENDANTS' AFFIDAVIT OF THOMAS WASSELL IN OPPOSITION TO THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

(Filed August 14, 1972)

STATE OF GEORGIA)
) ss
COUNTY OF FULTON)

THOMAS WASSELL, being first duly sworn, deposes and says that the following statements were made upon deponent's own personal knowledge and in response to the Motion for Summary Judgment by plaintiff Martin Cohn:

1.

I am employed by Cox Broadcasting Corporation as a news staff reporter for WSB-TV and I have been so employed for approximately nine years. Prior to my employment with WSB-TV I was employed as a news staff reporter with WNEP-TV, Scranton, Pennsylvania. I am a graduate of Kings College, Wilkes-Barre, Pennsylvania, having received a BA degree in Education in 1951. In my capacity as a news staff reporter with WSB-TV I investigate newsworthy events and prepare and make reports thereon which are televised over WSB-TV.

2.

I was the news staff reporter for WSB-TV that covered the trial on April 10, 1972 of the six youths indicted by the Fulton County Grand Jury for the murder and rape of Cynthia Cohn. I did not receive the assignment to cover the said trial until the morning of April 10,

1972, and I immediately departed for the Fulton County Courthouse after receiving the said assignment. Prior to this assignment, I had not covered any judicial proceedings or any events pertaining to the murder and rape of the said Cynthia Cohn or to the indictment of the six youths accused thereof, and I had never met, nor was I then or now acquainted with, the parents of the deceased girl. As mentioned hereinbefore, I attended the trial of the six youths at the Fulton County Courthouse on April 10, 1972 and I was present during the entire trial of this action on that date, except for approximately the first thirty (30) minutes thereof which I missed due to my late arrival. The news report which I prepared as a result of this assignment related exclusively to the events that took place during the said trial and to the subsequent transfer of the four of the six defendants from the Courthouse to the Fulton County Jail. That such was the substance of the said report which I prepared is shown by a copy of the transcript of said news report, attached hereto as Exhibit A, and a video tape copy of the said news report presently in the custody of the Court.

3.

The information on which I prepared the said report was obtained from several sources. First, by personally attending and taking notes of the said trial and the subsequent transfer of four of the six defendants to the Fulton County Jail, I obtained personal knowledge of the events that transpired during the trial of this action and the said transfer of the defendants. Such personal observations and notes were the primary and almost exclusive source of the information upon which the said news report was based. Secondly, during a recess of the said trial, I approached the clerk of the court, who was sitting directly in front of the bench, and requested to see a copy

of the indictments. In open court, I was handed the indictments, both the murder and the rape indictments, and was allowed to examine fully this document. As is shown by the said indictments (attached hereto as Exhibit B) the name of the said Cynthia Cohn appears in clear type. Moreover, no attempt was made by the clerk or anyone else to withhold the name and identity of the victim from me or from anyone else and the said indictments apparently were available for public inspection upon request.

4.

In preparing the said news report my sole purpose and object was to give a clear and factual report of the said trial and to attempt to capture the tone of the trial. In so reporting on this trial and in preparing the said news reports thereof, I was fully aware of the policy of WSB-TV not to report the name of a victim of a rape or an attempted rape, a policy of WSB-TV on which all reporters are given explicit instructions. In preparation of the said news report, however, I did not consider that the said WSB-TV policy was applicable in that the six defendants had been indicted for both murder and rape and the victim thereof was since deceased, having died approximately eight (8) months prior to the trial. I viewed the said trial, in light of these facts, primarily as a murder case, with additional charges of rape and attempted rape. In my opinion at that time this trial and the incidents related thereto fell within the same category as the much-publicized "Abduction-Murder-Rape" cases, in which a young girl is abducted, subsequently found murdered and raped, and thereafter a trial on grounds of murder and rape. A further factor which undoubtedly affected my decision to include the name of the said Cynthia Cohn in the said news report was the fact that I was given the name of the deceased girl in open court without any

attempt by anyone to withhold the same and the indictments, wherein the said girl's name appeared, were on public display and available to anyone who requested to examine the same. Under no circumstances could it be said, in my opinion, that the name of the said Cynthia Cohn was used in order to sensationalize the trial or to injure or embarrass the family of the deceased girl. Instead, as heretofore related, my sole purpose in preparing and causing to be televised the said report was to give a fair, honest and factual report of the said trial so that the public would have an accurate and complete picture of this said judicial proceeding.

/s/ Thomas Wassell

Sworn to and subscribed before me this 7th day of August, 1972.

/s/ Cynthia S. Willem
Notary Public

My Commission Expires March 2, 1974.

Exhibit A

WSB-TV News

Writer Wassell

Date April 10, 1972

Video	Audio
	Six youths went on trial today for the murder-rape of a teenaged girl.
Film: Wassell Standup	The six Sandy Springs High School boys were charged with murder and rape in the death of seventeen year old Cynthia Cohn following a drinking party last August 18th.

The tragic death of the high school girl shocked the entire Sandy Springs community. Today the six boys had their day in court.

Card #1

There was no jury. The six boys, through their lawyers, threw themselves on the mercy of the court . . . and the presiding judge, Sam Phillips McKenzie.

The prosecutor, Assistant Attorney General John Nuckolls said the girl had apparently drank a considerable amount of vodka after attending a private party. He said the girl was taken to a wooded area and raped. She passed out . . . and the liquids in her stomach were forced upward causing suffocation. The exact cause of death . . . that is whether the rape caused death he said would be difficult to prove.

Card #2

Judge McKenzie dropped the murder charge against all six . . . and proceeded with the charge of rape. The DA told the judge all six defendants wished to plead guilty . . . and not have a jury trial. The DA told the court the girl's family felt that a lenient 5 year sentence would serve justice and he recommended a five year sentence.

Card #3

Eighteen year old Peter Manchee pleaded guilty. The sentence for Manchee 7 years . . . with 4 to serve . . . 3 years under supervision. His defense lawyer pointed out that it was because of Manchee's cooperation the authorities were able to get to the truth of the case.

Card #4

Craig Wosniak . . . the Judge: How do you wish to plead? The boy, guilty . . . Wosniak was also sentenced to 7 years . . . with 4 years to serve.

Card #5

Bruce Howard. The DA said it was Howard who sent another boy to call the police. While he tried to revive the victim. Howard also pleaded guilty to the rape charge and also got 7 years . . . with 4 years to serve.

Card #6

Joe Adam Thompson. His attorney Charles Weltner said Thompson would plead guilty to attempted rape. The Judge sentenced Thompson to 2 years with three months to serve. Weltner did not believe Thompson should have received a jail term because he did not actually commit rape and cooperated with the authorities. Thompson then changed his plea from guilty . . . and asked for a trial by Jury.

Card #2

Judge McKenzie said he knows the parents of the Thompson boy and would be glad to disqualify himself from the jury trial. Then upon a request by Weltner, Judge McKenzie said he would.

Card #7

Ronald Eugene Longo pleaded guilty to attempted rape and was sentenced to 2 years with 3 months to serve.

Card #7

Bobby Ray King. Guilty to attempted rape was given two years probation.

Film: Silent

The four who received jail terms today, Peter Manchee, Craig Wozniak, Bruce Howard and Ronald Longo were taken to the Fulton County Jail. The Judge said he would try to see they served their time close to their home. Those who received 4 years could get out in ten months equal to one third the time off. Thompson will stand trial tomorrow.

Film: Wassell

And so there will be a trial by jury after all. Something of a disappointment for those involved in this tragedy who thought they would be spared some of the embarrassing details.

This is Tom Wassell from the Fulton County Courthouse.

Exhibit B

STATE OF GEORGIA, COUNTY OF FULTON.
IN THE SUPERIOR COURT OF SAID COUNTY.

THE GRAND JURORS selected, chosen and sworn for the County of Fulton, to-wit:

1. JOHN G. PRYOR, SR., FOREMAN
2. CHARLES B. WEST, ASSISTANT FOREMAN
3. MRS. BOISFEUILLET JONES, SECRETARY
4. J. PAUL ANTHONY, JR., ASST. SECRETARY
5. FRANCES ARONSON
6. FRANK J. ARRINGTON
7. MRS. LORRAINE M. BENNETT
8. HUGH W. BRANNON

9. JOHN W. DAVIS
10. FRANK E. EDWARDS
11. MRS. PATRICIA WYNN ELLINGER
12. RUTHERFORD L. ELLIS, JR.
13. JESSE S. HALL
14. MISS FRANCES NELSON
15. RICHARD U. NEWFIELD
16. MRS. LUCIA PULGRAM
17. EDWARD P. SHEALY
18. IAN F. STALKER
19. RAY VAUGHTERS
20. VERNOR R. VINES
21. WILEY W. VIRDEN
22. JAMES E. WELLDEN, JR.
23. H. C. WOOLLEY, JR.

in the name and behalf of the citizens of Georgia, charge and accuse PETER MANCHEE and CRAIG WOZNIAK and BRUCE F. HOWARD and JOE ADAM THOMPSON and RONALD EUGENE LONGO and BOBBY RAY KING with the offense of:—

RAPE

for that said accused, in the County of Fulton and State of Georgia, on the 18th day of August, 1971 did have carnal knowledge of the person of Cynthia Leslie Cohn, a female, forcibly and against her will;—

contrary to the laws of said State, the good order, peace and dignity thereof.

Lewis R. Slaton, District Attorney
Special Presentment.

STATE OF GEORGIA, COUNTY OF FULTON.
IN THE SUPERIOR COURT OF SAID COUNTY.

THE GRAND JURORS selected, chosen and sworn for the County of Fulton, to-wit:

1. JOHN G. PRYOR, SR., FOREMAN
2. CHARLES B. WEST, ASSISTANT FOREMAN
3. MRS. BOISFEUILLET JONES, SECRETARY
4. J. PAUL ANTHONY, JR., ASST. SECRETARY
5. FRANCES ARONSON
6. FRANK J. ARRINGTON
7. MRS. LORRAINE M. BENNETT
8. HUGH W. BRANNON
9. JOHN W. DAVIS
10. FRANK E. EDWARDS
11. MRS. PATRICIA WYNN ELLINGER
12. RUTHERFORD L. ELLIS, JR.
13. JESSE S. HALL
14. MISS FRANCES NELSON
15. RICHARD U. NEWFIELD
16. MRS. LUCIA PULGRAM
17. EDWARD P. SHEALY

18. IAN F. STALKER
19. RAY VAUGHTERS
20. VERNOR R. VINES
21. WILEY W. VIRDEN
22. JAMES E. WELLDEN, JR.
23. H. C. WOOLLEY, JR.

in the name and behalf of the citizens of Georgia, charge and accuse PETER MANCHEE and CRAIG WOZNIAK and BRUCE F. HOWARD and JOE ADAM THOMPSON and RONALD EUGENE LONGO and BOBBY RAY KING with the offense of:—

MURDER

for that said accused, in the County of Fulton and State of Georgia, on the 18th day of August, 1971 did while in the commission of the offense of Rape, a felony, upon the person of Cynthia Leslie Cohn, a female human being, cause her death by causing her to suffocate;—

MURDER & RAPE—$20,000—3-25-72—
Kenneth D. Manchee & Shirley M. Manchee
6631 Hunting Creek Rd NW 30328

(Reference to Certificate of Service Has Been Omitted)

(Caption Omitted)

MOTION OF DEFENDANTS COX BROADCASTING CORPORATION AND THOMAS WASSELL FOR SUMMARY JUDGMENT

(Filed August 14, 1972)

COME NOW defendants Cox Broadcasting Corporation and Thomas Wassell and move this Court, pursuant to §56 of the Civil Practice Act, Ga. Code Ann. §81A-156, for summary judgment in their favor dismissing plaintiff's Complaint with prejudice.

As grounds for this Motion, defendants state that the pleadings and affidavits on file show that there is no genuine issue as to any material fact that might avoid the entry of summary judgment in favor of these defendants and that these defendants are entitled to a judgment as a matter of law.

In support of this Motion, defendants rely upon the following documents which have been filed in these proceedings and incorporated by reference herein:

1. The pleadings, including plaintiff's Complaint and defendants' Answer thereto;

2. Defendants' Affidavit of Thomas Wassell in Opposition to the Plaintiff's Motion for Summary Judgment and Exhibits "A" and "B" attached thereto;

3. Brief of Defendants Cox Broadcasting Corporation and Thomas Wassell in Support of Their Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment.

WHEREFORE, defendants request that their Motion for Summary Judgment be granted; that a judgment be

entered in favor of these defendants and against plaintiff, Martin Cohn, dismissing plaintiff's Complaint with prejudice; and that defendants have such other and further relief as this Court deems just and proper.

King & Spalding
/s/ Kirk McAlpin
/s/ John A. Pickens
/s/ Michael C. Russ
Attorneys for Defendants Cox Broadcasting Corporation and Thomas Wassell

2500 Trust Company of Georgia Building
Atlanta, Georgia 30303
404-577-5350

(Certificate of Service Omitted)

(Caption Omitted)

MOTION OF DEFENDANTS COX BROADCASTING CORPORATION AND THOMAS WASSELL TO STRIKE AFFIDAVIT OF JOHN NUCKOLLS

(Filed August 14, 1972)

COME NOW defendants, Cox Broadcasting Corporation and Thomas Wassell, pursuant to Section 12(f) and Section 56(e) of the Civil Practice Act, Ga. Code. Ann §§81A-112(f), 156(e), and move this Court for an Order striking the Affidavit of John Nuckolls filed in support of plaintiff's Motion for Summary Judgment.

As grounds for this Motion, defendants state that said Affidavit contains immaterial matter that is not admissible in evidence. Furthermore, much of said Affidavit is comprised of inadmissible hearsay, double hearsay and unsup-

ported opinions and conclusions of the Affiant which lack proper foundation. For these and other reasons set forth in defendant's Brief filed in support of this Motion, defendants respectfully submit the Affidavit of John Nuckolls does not meet the requirements of Ga. Code Ann. §81A-156(e), and accordingly said Affidavit is not legally cognizable support for plaintiff's Motion for Summary Judgment.

WHEREFORE, defendants request that the Affidavit of John Nuckolls be stricken in its entirety, or in the alternative, that the irrelevant and inadmissible portions of said Affidavit be stricken and excised from the record.

King & Spalding
/s/ Kirk McAlpin
/s/ John A. Pickens
/s/ Michael C. Russ
Attorneys for Defendants Cox Broadcasting Corporation and Thomas Wassell

2500 Trust Company of
Georgia Building
Atlanta, Georgia 30303
404-577-5350
Date: August 14, 1972

(Certificate of Service Omitted)

(Caption Omitted)

RESPONSE OF DEFENDANTS COX BROADCASTING CORPORATION AND THOMAS WASSELL TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

(Filed August 14, 1972)

COME NOW defendants COX BROADCASTING CORPORATION and THOMAS WASSELL pursuant to Ga. Code Ann. §81A-156 (Ga. Laws 1966, pp. 609, 660; 1967, pp. 226, 238), and oppose the Motion for Summary Judgment filed by plaintiff Martin Cohn. In support of this opposition defendants have filed the affidavit of Thomas Wassell dated August 7, 1972 and attached Exhibits, together with the Brief of Defendants Cox Broadcasting Corporation and Thomas Wassell In Support of Their Motion for Summary Judgment And In Opposition to Plaintiff's Motion for Summary Judgment. These documents are incorporated by reference herein.

WHEREFORE, the defendants COX BROADCASTING CORPORATION and THOMAS WASSELL, respectfully pray that the Motion for Summary Judgment by the plaintiff Martin Cohn be denied.

King & Spalding
/s/ Kirk McAlpin
/s/ John A. Pickens
/s/ Michael C. Russ
Attorneys for Defendants Cox Broadcasting Corporation and Thomas Wassell

2500 Trust Company
of Georgia Bldg.
Atlanta, Ga. 30303
404-577-5350

(Certificate of Service Omitted)

(Caption Omitted)

PLAINTIFF'S AFFIDAVIT OF MARTIN COHN IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

(Filed September 29, 1972)

STATE OF GEORGIA)
) ss
COUNTY OF FULTON)

MARTIN COHN, being first duly sworn, deposes and says that the following statements were made upon deponent's own personal knowledge and in support of his Motion for Summary Judgment.

1.

My name is MARTIN COHN and I live at 265 River North Drive, Atlanta, Fulton County, Georgia. I am the father of Cynthia Leslie Cohn, 17 who died on August 18, 1971.

2.

On the 23rd of February, 1972, I was informed that an investigation was underway concerning the death of my daughter. On March 4, 1972, I learned that the Fulton County Grand Jury had indicted six men for the rape and murder of Cindy. The facts and circumstances of the investigation and resulting charges were the subject of the most intense publicity by newspapers, radio, and television. The lurid accounts and details of the case were publicized for what seemed an eternity. Among those telecasting these accounts and details was WSB-TV. Included in this news coverage were allegations and suggestions of misconduct on Cindy's part and statements that there had been a family quarrel the night of her death. These reports were unfounded and untrue.

3.

As a result of this publicity, my wife, my children, and I were subjected to the most excruciating anguish and suffering imaginable. It became necessary for me to remove my two older children from the public schools as they were subjected to harrassment. I also was forced to send my family away from town. I was nearly unable to continue my business activities.

4.

During the first part of March, I was contacted by Mr. John Nuckolls, Assistant District Attorney who was in charge of the case. I stated to him the unbelievable difficulty which the publicity over the case was causing, and pleaded for him to try to stop any further news coverage of the details of the death of my daughter. I told him that if this type of publicity about the case continued unchecked my family and I would be driven crazy. From day to day, under this tremendous pressure I struggled to endure the character attacks on my daughter that constantly occurred and intensified.

5.

Bearing in mind all the previous agony I had faced, it is impossible to exaggerate the utter despair, humiliation and embarrassment I felt when I viewed on WSB-TV a newscast which named my daughter, Cindy, as being the victim of a crime about which so much already had been said. I viewed this telecast at my home on April 10, 1972, at approximately 6:10 P.M. To the best of my knowledge and recollection the newscaster, TOM WASSELL of WSB-TV, stated that Cindy Cohn, a North Springs High School student, was the victim of the rapes and attempted rapes.

6.

I immediately telephoned Assistant District Attorney John Nuckolls, to determine what action could be taken. I do not recall exactly what I said due to my emotional state caused by the telecast. I do know I begged and pleaded with Mr. Nuckolls to do whatever he could to stop the television station from continuing to use her name.

7.

I cannot adequately express my feelings resulting from this telecast. I had managed to somehow survive the previous publicity, terrible as it was, because at least the specific identity of my family and daughter had been avoided. Then anonymity was shattered and everything that went before seemed minor by comparison. I even received sadistic telephone calls when the callers would breathe into the telephone or laugh without saying anything. This had not happened before the telecasts. I felt humiliated by the whole pattern of the publicity because the news media, including the defendants, made it seem as though my daughter was somehow responsible for her rape and death.

8.

I make this Affidavit for the purpose of assisting in the Motion submitted on my behalf for Summary Judgment and in the hope that justice will be done for my daughter, my family and myself.

/s/ Martin Cohn

Sworn to and subscribed before me this 29th day of September, 1972.

/s/ Phyllis Rieke
Notary Public
My Commission Expires Sept. 7, 1974

(Certificate of Service Omitted)

(Caption Omitted)

PLAINTIFFS' AMENDED AFFIDAVIT OF JOHN NUCKOLLS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

(Filed October 2, 1972)

STATE OF GEORGIA)
) ss
COUNTY OF FULTON)

JOHN NUCKOLLS, being first duly sworn, deposes and says that the following statements were made upon deponent's own personal knowledge and in support of Plaintiff's Motion for Summary Judgment.

1.

My name is JOHN NUCKOLLS. I live at 6429 Cherrytree Lane, Atlanta, Georgia. For four and one-half years from January 1968 through June 1972, I was employed as an Assistant District Attorney, Atlanta Judicial Circuit.

2.

During February 1972, I became familiar with an investigation involving six Sandy Springs youths. This investigation culminated on March 3, 1972 with indictments being returned charging the six with the rape and murder of Cynthia Leslie Cohn, a 17 year old female.

3.

On March 4, the day following the return of the indictments widespread coverage was given the case in newspapers and on T.V. This coverage continued daily for almost two weeks, and included statements that the victim had gotten drunk at a party and passed-out after a fight

with her father. Due to the facts which were being related by the press concerning the victim and the conduct of the defendants, Superior Court Judge, Osgood Williams issued an Order restraining counsel for the State and the defense from making any statement to the press; however, news coverage of the case continued unabated.

4.

Approximately March 10, 1972, Affiant met with Martin Cohn, father of Cindy Cohn. At this meeting Affiant was aware that Mr. Cohn was very concerned over the publicity given the case and affiant told him that the District Attorney's office would do all that was possible to protect him from further publicity.

5.

On April 10, 1972, the criminal cases against the six defendants were called for trial before Judge Sam Phillips McKenzie. Affiant's personal investigation into the facts of the case indicated that the felony murder charges were not capable of proof beyond a reasonable doubt, therefore affiant, in open Court, moved to nol pros that indictment as to all defendants. Judge McKenzie inquired of affiant concerning the Motion and affiant stated that the medical testimony upon which the State relied was not legally conclusive that the death of the victim was caused during the commission of the rapes. Based upon affiant's statement of fact, Judge McKenzie nol prossed the murder indictment before proceeding on the arraignment of the defendants to charges of rape.

6.

The Defendants were then arraigned in the rape indictment and three (3) plead guilty to rape, two (2) to attempted rape, and one (1), Joe Thompson, plead not guilty. The Court then asked to hear the facts of the case which formed the basis for the pleas. Affiant stated in open Court the facts as known to affiant, including a statement that the victim's father had suffered severely because of the publicity given the case. The Court accepted the pleas, imposed sentence, and set the Thompson case down for trial at a later date. Present during the above proceeding was Tom Wassell. That evening, April 10, 1972, at approximately 6:10 P.M. affiant observed a telecast over WSB-TV which featured an account by Tom Wassell of the case. Wassell was shown on the Fulton County Courthouse steps. In this telecast Thomas Wassell used the victim's name, Cindy Cohn stating that she was the victim of the rapes and attempted rapes. Affiant followed closely news coverage of the case and to affiant's knowledge this was the first occasion that the name Cindy Cohn had ever been mentioned in any news story. Within minutes of the telecast of Cindy Cohn's name affiant received a telephone call from Martin Cohn. Mr. Cohn insisted that the news program featuring his daughter's name be stopped. Affiant was familiar with the policy of WSB-TV not to use the names of such persons due to prior contacts with WSB-TV personnel, and assured Mr. Cohn that the use of his daughter's name was probably an oversight and would be corrected. After a lengthy conversation with Mr. Cohn, affiant awaited the eleven o'clock news, which was delayed due to a special program.

7.

At approximately 12:20 A.M. April 11, 1972, affiant observed the same telecast as previously mentioned repeated on the late evening news. Again the name Cindy Cohn was used as the victim of a rape and attempted

rape. On April 11, 1972, at approximately 9:15 A. M., affiant observed Thomas Wassell in the chambers of Judge McKenzie. Because of affiant's telephone conversation with Martin Cohn on the previous evening, and Mr. Cohn's comments, affiant inquired of Mr. Wassell if he had intentionally used Cindy Cohn's name during his news coverage of the case. Wassell stated that he had done so intentionally. Affiant asked whether or not he was aware that such telecasts violated Georgia Law and Mr. Wassell stated that he used the victim's name because he thought the name had "already been released". Affiant informed Mr. Wassell that such was not the case and that affiant was greatly concerned over the emotional condition of Mr. Cohn due to the telecast. Affiant requested that such telecasts be halted and after further brief conversation Mr. Wassell departed with the comment that he was going to see his lawyer.

8.

Affiant had the opportunity to personally see and observe Martin Cohn on numerous occasions, both before and after the telecasts on April 10, and April 11, 1972 by WSB-TV. Because of affiant's observations of Martin Cohn following those telecasts which included his daughter's name, affiant concluded that Mr. Cohn could not be asked to be a witness although his testimony was critical to the prosecution. Mr. Cohn's emotional state was such that affiant was unsure of his reaction to the anticipated defense concerning misconduct on the part of his daughter. In addition affiant feared that further publicity which must include Mr. Cohn's name or that of his daughter would cause irreparable damage to him and to his family. For those reasons and others affiant sought a disposition of the remaining case other than by trial. Judge McKenzie heard facts which included facts about Martin Cohn's emotional condition and state of mind and accepted a plea of guilty to attempted rape.

/s/ John Nuckolls

Sworn to and subscribed before me this 2nd day of October, 1972.

/s/ Linda B. Sinclair
Notary Public

(Certificate of Service Omitted)

(Caption Omitted)

AMENDED MOTION FOR SUMMARY JUDGMENT

(Filed October 5, 1972)

Comes now the Plaintiff in the above-styled action and amends its Motion for Summary Judgment by attaching thereto and incorporating therein the Affidavits of Martin Cohn and the amended Affidavit of John Nuckolls, together with a Brief in Support of Plaintiff's Motion, all of which have been duly filed and copies of which have been served on Counsel for Defendants.

This 5 day of October, 1972.

Zachry & Land
By: /s/ Stephen A. Land

1505 Fulton National Bank Bldg.
Atlanta, Georgia 30303
577-6072

(Certificate of Service Omitted)

(Caption Omitted)

MOTION OF DEFENDANTS COX BROADCASTING CORPORATION AND THOMAS WASSELL TO STRIKE THE AFFIDAVIT OF PLAINTIFF MARTIN COHN

(Filed October 24, 1972)

COME NOW defendants Cox Broadcasting Corporation and Thomas Wassell, pursuant to Section 12(f) and Section 56(e) of the Georgia Civil Practice Act, *Ga. Code Ann.* §§ 81A-112(f), 156(e) and move this Court for an order striking the affidavit of plaintiff Martin Cohn.

As grounds for this motion, defendants respectfully show that:

1. The said affidavit contains inadmissible opinions and conclusions of the affiant; is without any probative value in that the affidavit affirmatively shows that it contains conclusory allegations; purports to be predicated upon matters which are inadmissible; and accordingly fails to meet the requirements of *Ga. Code Ann.* § 81A-156(e) and is not legally cognizable;

2. The said affidavit is immaterial, irrelevant and not germane and without probative value in that it constitutes no more than a reiteration of the allegations of the plaintiff's complaint which have been pierced by defendants' affidavits and Motion for Summary Judgement and accordingly offers nothing to refute defendants' proof as aforesaid;

3. Paragraphs 2, 3, 4, 5, 6 and 7 of plaintiff's affidavit contain inadmissible and unsupported conclusions and opinions of the affiant and accordingly, the same having no probative value and not being legally cognizable, fail to meet the requirements of *Ga. Code Ann.* § 81A-156(e).

WHEREFORE defendants move that the said affidavit of plaintiff Martin Cohn be stricken in its entirety for the reasons aforesaid, or in the alternative, that the irrelevant and inadmissible portions thereof be stricken.

King & Spalding
/s/ Kirk M. McAlpin
/s/ John A. Pickens
Attorneys for Defendants Cox Broadcasting Corporation and Thomas Wassell

2500 Trust Company of Georgia Building
Atlanta, Georgia 30303
404/577-5350

(Certificate of Service Omitted)

(Caption Omitted)

MOTION OF DEFENDANTS COX BROADCASTING CORPORATION AND THOMAS WASSELL TO STRIKE AND TO RENEW ITS MOTION TO STRIKE THE ORIGINAL AND THE AMENDED AFFIDAVITS OF JOHN NUCKOLLS

(Filed October 24, 1972)

COME NOW defendants Cox Broadcasting Corporation and Thomas Wassell, pursuant to Section 12(f) and Section 56(e) of the Georgia Civil Practice Act, *Ga. Code Ann.* §§ 81A-112(f), 156(e) and renew their Motion to Strike the original affidavit of John Nuckolls and further move this Court for an order striking the amended affidavit of John Nuckolls.

As grounds for this motion and defendants' Motion to Strike the original affidavit of John Nuckolls, defendants respectfully show that:

1. The said original and amended affidavits contain inadmissible hearsay, opinions and conclusions of the affiant; are without any probative value in that the said affidavits affirmatively show that they contain conclusory allegations; purport to be predicated upon matters which are inadmissible; and accordingly fail to meet the requirements of *Ga. Code Ann.* § 81A-156(e) and are not legally cognizable;

2. The said affidavits are immaterial, irrelevant and not germane and without probative value in that they constitute no more than a reiteration of the allegations of the plaintiff's complaint which has been pierced by defendants' affidavits and Motion for Summary Judgement and accordingly offer nothing to refute defendants' proof as aforesaid;

3. The said affidavits constitute conclusory allegations and inadmissible matter in that they purport to express an opinion as to the state of mind of another person, said statements and opinions being inadmissible and insufficient to constitute evidence pursuant to *Ga. Code Ann.* § 81A-156(e), and accordingly the said affidavit is not legally cognizable.

4. Paragraphs 9, 13 and 14 of the original affidavit of John Nuckolls and paragraphs 4, 7, and 8 of the amended affidavit of John Nuckolls contain inadmissible hearsay, conclusions and opinions of the affiant and accordingly, the same having no probative value and not being legally cognizable, fail to meet the requirements of *Ga. Code Ann.* § 81A-156(e).

WHEREFORE defendants move that the said original and amended affidavits of John Nuckolls be stricken in their entirety for the reasons aforesaid, or in the alternative, that the irrelevant and inadmissible portions thereof be stricken.

King & Spalding
/s/ Kirk M. McAlpin
/s/ John A. Pickens
Attorneys for Defendants Cox Broadcasting Corporation and Thomas Wassell

2500 Trust Company of Georgia Building
Atlanta, Georgia 30303
404/577-5350

(Certificate of Service Omitted)

(Caption Omitted)

AMENDMENT TO ANSWER OF DEFENDANTS, COX BROADCASTING CORPORATION AND THOMAS WASSELL

(Filed October 24, 1972)

COMES NOW COX BROADCASTING CORPORATION and THOMAS WASSELL, defendants in the above-styled action, and as permitted by Georgia Code Section 81A-115(a) prior to the entry of a pre-trial order in this cause, amend their answer as follows:

1.

By striking the EIGHTH DEFENSE to the Plaintiff's Complaint in its entirety and inserting in lieu thereof the following:

EIGHTH DEFENSE

Georgia Code Section 26-9901 upon which the Plaintiff bases his suit and which provides as follows:

> "It shall be unlawful for any news media or any other person to print and publish, broadcast, televise, or disseminate through any other medium of public dissemination or cause to be printed and published, broadcast, televised, or disseminated in any newspaper, magazine, periodical or other publication published in this State or through any radio or television broadcast originating in the State the name or identity of any female who may have been raped or upon whom an assault with intent to commit rape may have been made. Any person or corporation violating the provisions of this section shall, upon conviction, be punished as for a misdemeanor"

is repugnant to and in violation of Article I, Section I, Paragraph XV of the Constitution of the State of Georgia which provides as follows:

> "No law shall ever be passed to curtail or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty."

for the reason that said statute is a law which seeks to curtail or restrain the liberty of the press by prohibiting the publication or broadcast of the name or identity of a female who may have been raped and seeks to restrain the publication of the name or identity of a female who may have been raped which is a matter of public interest and concern, which right is guaranteed under Article I, Section I, Paragraph XV of the Constitution of the State

of Georgia and therefore violates defendants' constitutional rights as aforesaid.

2.

By adding to the answer a NINTH DEFENSE to the Plaintiff's Complaint as follows:

NINTH DEFENSE

Georgia Code Section 26-9901 upon which the Plaintiff bases his suit and which provides as follows:

> "It shall be unlawful for any news media or any other person to print and publish, broadcast, televise, or disseminate through any other medium of public dissemination or cause to be printed and published, broadcast, televised, or disseminated in any newspaper, magazine, periodical or other publication published in this State or through any radio or television broadcast originating in the State the name or identity of any female who may have been raped or upon whom an assault with intent to commit rape may have been made. Any person or corporation violating the provisions of this section shall, upon conviction, be punished as for a misdemeanor."

is, as applied to the alleged circumstances in this action, repugnant to and in violation of the First Amendment to The United States Constitution, which provides in part, as follows:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press: . . ."

and the Fourteenth Amendment to The United States Constitution, which provides in part, as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

for the reason that said statute constitutes a prior restraint upon the publication of matters of public interest and concern; that the said statute prohibits the publication of truthful facts about matters of public interest and concern; and is unduly overbroad in its prohibition of the publication of the name or identity of any female who may have been raped or upon whom an assault with intent to commit rape may have been made without regard to the other facts and circumstances surrounding the rape or attempted rape which may make the female victim's name or identity a matter of public interest or concern, the same being violative of defendants' constitutional rights, as aforesaid.

3.

By adding to the answer a **TENTH DEFENSE** to the Plaintiff's Complaint as follows:

TENTH DEFENSE

Georgia Code Section 26-9901 upon which the Plaintiff bases his suit and which provides as follows:

> "It shall be unlawful for any news media or any other person to print and publish, broadcast, televise, or disseminate through any other medium of public dissemination or cause to be printed and published, broadcast, televised, or disseminated in any newspaper, magazine, periodical or other publication published in this

> State or through any radio or television broadcast originating in the State the name or identity of any female who may have been raped or upon whom an assault with intent to commit rape may have been made. Any person or corporation violating the provisions of this section shall, upon conviction, be punished as for a misdemeanor."

is repugnant to and in violation of the First Amendment to The United States Constitution, which provides in part as follows:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press; . . ."

and the Fourteenth Amendment to The United States Constitution, which provides in part as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

for the reason that the said statute seeks to impose criminal sanctions upon acts of individuals in truthfully reporting events of public interest and concern, the right to do so being guaranteed to such individuals and these defendants under the First and Fourteenth Amendments to The United States Constitution and to Article I, Section I, Paragraph XV of the Georgia Constitution, all as aforesaid.

4.

By adding to the answer an **ELEVENTH DEFENSE** to the Plaintiff's Complaint as follows:

ELEVENTH DEFENSE

Plaintiff is not in any way entitled to any of the relief sought as against defendants in this cause.

Respectfully submitted this 23 day of October, 1972.

King & Spalding
/s/ Kirk McAlpin
/s/ John A. Pickens
Attorneys for Defendants Cox Broadcasting Corporation and Thomas Wassell

2500 Trust Company of Georgia Building
Atlanta, Georgia 30303
Tel (404) 577-5350

(Certificate of Service Omitted)

ORDER ON MOTIONS FOR SUMMARY JUDGMENT FILED BY SAID PLAINTIFF AND SAID DEFENDANTS

The Order of the Trial Court on Cross-Motions for Summary Judgment may be found in the appendix to the Jurisdictional Statement commencing at page A-1.

(Caption Omitted)

MOTION TO RECONSIDER

(Filed December 22, 1972)

COME NOW Cox Broadcasting Corporation and Thomas Wassell, defendants in the above-styled action, and file and make this their Motion for Reconsideration of this Court's Order dated December 12, 1972, granting plaintiff's Motion for Summary Judgment, only as to liability, and denying defendants' Motion for Summary Judgment.

As grounds for their Motion for Reconsideration these defendants show the following:

1.

It is respectfully submitted that this Court has overlooked or has erroneously misconstrued the controlling and applicable law in this action in finding that:

(a) *Ga. Code Ann.* §26-9901, and its predecessor *Ga. Laws* 1911, pp. 179-180, state a rule of civil conduct upon which plaintiff, the father of the deceased victim Cynthia Leslie Cohn, can recover from these defendants under the particular facts in the instant case;

(b) *Ga. Code Ann.* §26-9901 operates in favor not only of the female victim but also in favor of her family, especially the victim's father, and that a violation as to the female victim is also a violation as to the father of the said female victim;

(c) *Ga. Code Ann.* §26-9901 is applicable to the publication of the name or identity of a female victim who is deceased on the date of the publication in question;

(d) The constitutional and statutory privileges afforded the news media are modified to the extend of the conduct proscribed by *Ga. Code Ann.* §26-9901;

(e) *Ga. Code Ann.* §26-9901, and its predecessor *Ga. Laws* 1911, pp. 179-180, is not unconstitutional as a rule of civil conduct for any reason set forth in the pleadings in this action.

2.

It is respectfully submitted that *Ga. Laws* 1911, pp. 179-180, upon which this Court has predicated its finding of liability on the part of these defendants, was repealed by the enactment of the 1968 Criminal Code, *Ga. Laws* 1968, p. 1249, 1338.

WHEREFORE, defendants Cox Broadcasting Corporation and Thomas Wassell respectfully pray that this Court reconsider and set aside its Order of December 12, 1972, and grant defendants' Motion for Summary Judgement and deny plaintiff's Motion for Summary Judgement.

King & Spalding
/s/ Kirk M. McAlpin
/s/ John A. Pickens
/s/ Joseph R. Bankoff
Attorneys for Defendants Cox Broadcasting Corporation and Thomas Wassell

2500 Trust Company of
Georgia Building
Atlanta, Georgia 30303
(404) 658-1350

(Certificate of Service Omitted)

(Caption Omitted)

ORDER UPON HEARING OF DEFENDANTS' MOTION TO RECONSIDER

(Filed December 29, 1972)

Upon consideration of said motion on the briefs of counsel, and the oral arguments of counsel, the Court has undertaken to review its previous order and to consider all points made in the motion; and is constrained to adhere to its previous order and ruling and it is so ordered by the Court.

Upon presentation of a certificate of immediate review, if such is desired, immediate review will be ordered.

This 29 December, 1972.

Durwood Pye, Judge
Superior Court

(Caption Omitted)

CERTIFICATE OF APPEALABILITY OF ORDER UPON HEARING OF DEFENDANTS' MOTION TO RECONSIDER

(Filed December 29, 1972)

Motion for Reconsideration having been made by defendants in the above styled action, and an Order adhering to the Court's previous order of December 12, 1972, having been entered by the Court on the 29th day of December, 1972, now and within 10 days of the denial of said Order of December 29, 1972, I hereby certify that said Order of December 29, 1972, is of such importance to the case

that immediate review should be had, and that direct appeal in such matter is proper.

This 29th day of December, 1972.

/s/ Durwood Pye
Judge
Superior Court of Fulton County

(Caption Omitted)

NOTICE OF APPEAL

(Filed January 9, 1973)

Notice is hereby given that the defendants above named hereby appeal to the Supreme Court of the State of Georigia from an Order of the Honorable Durwood T. Pye, Judge of the Superior Court, Fulton County, State of Georgia, granting Summary Judgment for the plaintiff, only as to liability, signed on the 12th day of December, 1972, and entered in the Clerk's Office on the 13th day of December, 1972. The defendants appeal from each and every part of said Order.

Notice is also hereby given that the above named defendants hereby appeal to the Supreme Court of the State of Georgia from an Order of the Honorable Durwood T. Pye, Judge of the Superior Court, Fulton County, State of Georgia, signed on the 12th day of December, 1972, and entered in the Clerk's Office on the 13th day of December, 1972, denying defendants' Motion for Summary Judgment in the above styled action, which Order was certified on the 19th day of December, 1972, by said Honorable Durwood T. Pye to be of such importance to the case that immediate review should be had herein and the defendants appeal from each and every part of said Order.

Notice is also hereby given that defendants above named hereby appeal to the Supreme Court of the State of Georgia from an Order of the Honorable Durwood T. Pye, Judge of the Superior Court, Fulton County, State of Georgia, signed on the 29th day of December, 1972, and entered on the 29th day of December, 1972, which Order reaffirmed and adhered to the Order of the Court in the above styled cause signed on December 12, 1972, and entered on December 13, 1972, which Order granted Summary Judgment in behalf of the plaintiff, only as to liability. The defendants appeal from each and every part of said Order.

Notice is also hereby given that the above named defendants hereby appeal to the Supreme Court of the State of Georgia from an Order of the Honorable Durwood T. Pye, Judge of the Superior Court, Fulton County, State of Georiga signed on the 29th day of December 1972, and entered on the 29th day of December, 1972, which Order reaffirmed and adhered to the Order of the Court in the above styled case signed on December 12, 1972, and entered on the 13th day of December, 1972, denying defendants' Motion for Summary Judgment in the above styled case, which Order was certified on the 29th day of December, 1972, by said Honorable Durwood T. Pye to be of such importance to the case that immediate review should be had herein and the defendants appeal from each and every part of said Order.

The clerk will please omit nothing pertaining to this action from the record on appeal.

No transcript of evidence and proceedings will be filed for inclusion in the record on appeal.

This 9th day of January, 1973.

King & Spalding
/s/ Kirk M. McAlpin
/s/ John A. Pickens
/s/ Joseph R. Bankoff
Attorneys for Defendants Cox Broadcasting Corporation and Thomas Wassell

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(Certificate of Service Omitted)

IN THE SUPREME COURT OF GEORGIA

CASE NO. 27880

COX BROADCASTING CORPORATION AND THOMAS WASSELL,
Appellants

vs.

MARTIN COHN,
Appellee

ENUMERATION OF ERRORS BY APPELLANTS

• • •

4.

The Superior Court of Fulton County erred as a matter of law in granting appellee Martin Cohn's Motion for Summary Judgment because the pleadings, together with appellants' Motion for Summary Judgment and affidavits attached thereto show that it was error as a matter of law for the court to find that the privileges afforded defendants by the First and Fourteenth Amendments to the United States Constitution, Article I, Section I, Paragraph XV of the Constitution of the State of Georgia, (*Georgia Code* § 2-115) and *Georgia Code* §§ 105-704, 709(4) must yield to the restriction of speech and press embodied in that part of the Act of the General Assembly of Georgia, approved April 10, 1968, *Ga. Laws* 1968, pp. 1249-1351, designated therein at pp. 1335-36 as Section 26-9901 relating to the Publication of Name or Identity of Female Raped or Assaulted: Punishment [codified as Georgia Code § 26-9901] and the Act of the General Assembly of Georgia, approved August 21, 1911 relating to the Name of Assaulted Female, Publication of Prohibited, *Ga. Laws* 1911, pp. 179-80 [codified as Georgia Code (1933) § 26-2105], and that the said privileges are modified to the extent of the said restriction in said statutes. (R. 6-9, 307-08].

• • •

6.

The Superior Court of Fulton County erred as a matter of law in granting appellee Martin Cohn's Motion for Summary Judgment because the pleadings, together with appellants' Motion for Summary Judgment and affidavits attached thereto show that it was error as a matter of law for the Court to find that the part of the Act of the General Assembly of Georgia, approved April 10, 1968, *Ga. Laws* 1968, pp. 1249-1351, designated therein at pp. 1335-36 as Section 26-9901 relating to the Publication of Name or Identity of Female Raped or Assaulted: Punishment [codified as Georgia Code § 26-9901] and the Act of the General Assembly of Georgia, approved August 21, 1911 relating to the Name of Assaulted Female, Publi-

cation of Prohibited, *Ga. Laws* 1911, pp. 179-80 [codified as Georgia Code (1933) § 26-2105], are not unconstitutional as a rule of civil conduct for any reason set forth in the pleadings, the said statutes being not unreasonably restrictive of the freedom of speech and press. (R. 251-59, 305-08).

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10.

The Superior Court of Fulton County erred as a matter of law in denying appellants Cox Broadcasting Corporation and Thomas Wassell's Motion for Summary Judgment because the pleadings, together with appellants' Motion for Summary Judgment and affidavits attached thereto show that there is no genuine issue as to any material fact and that appellants are entitled to a judgment in their favor as a matter of law for the reason that appellants' actions in publishing the name of appellee's deceased daughter, Cynthia Leslie Cohn, are privileged under the First and Fourteenth Amendments to the United States Constitution, Article I, Section I, Paragraph XV of the Constitution of the State of Georgia, (*Georgia Code* § 2-115) and *Georgia Code* §§ 105-704, 709(4) which afford the privilege to the news media to make truthful reports relating to matters of public or general concern and to court proceedings and reports emanating from police investigations. (R. 8-9).

• • •

12.

The Superior Court of Fulton County erred as a matter of law in denying appellants Cox Broadcasting Corporation and Thomas Wassell's Motion for Summary Judgment because the pleadings, together with appellants' Motion for Summary Judgment and affidavits attached thereto show that there is no genuine issue as to any material

fact and that appellants are entitled to a judgment in their favor as a matter of law for the reason that the part of the Act of the General Assembly of Georgia, approved April 10, 1968, *Ga. Laws* 1968, pp. 1249-1351, designated therein at pp. 1335-36 as Section 26-9901 relating to the Publication of Name or Identity of Female Raped or Assaulted: Punishment [codified as Georgia Code § 26-9901] (and the Act of the General Assembly of Georgia, approved August 21, 1911 relating to the Name of Assaulted Female, Publication of Prohibited, *Ga. Laws* 1911, pp. 179-80 [codified as Georgia Code (1933) § 26-2105] insofar as the same may be deemed applicable) is unconstitutional as restrictive of the freedom of speech and press in violation of the First and Fourteenth Amendments to the United States Constitution and Article I, Section I, Paragraph XV of the Constitution of the State of Georgia (*Georgia Code* § 2-115) in that the said statute constitutes a prior restraint on the freedom of speech and press by prohibiting the reporting of truthful facts of public interest and concern and the said statute is unconstitutionally overbroad on its face and in its application since it prohibits the publication of both true and false statements and also applies to both publications relating to a victim who has only been raped or assaulted with intent to commit rape and to a victim who has been raped or assaulted with intent to commit rape on whom another crime has been perpetrated and who otherwise may be a matter of public interest and concern. (R. 251-59).

• • •

(Certificate of Service Omitted)

OPINION

The opinion of the Supreme Court of Georgia may be found in the appendix to the Jurisdictional Statement at page A-9.

(Caption Omitted)

JUDGMENT OF THE SUPREME COURT OF GEORGIA

Atlanta, September 5, 197[3]

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

Cox Broadcasting Corporation et al. v. Martin Cohn

This case came before this court upon an appeal from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed in part and reversed in part with direction for the reasons stated in the opinion this day filed. All the Justices concur except Grice, P. J., Undercofler and Jordan, JJ., who dissent.

(Caption Omitted)

MOTION FOR REHEARING AND REARGUMENT BY APPELLANTS COX BROADCASTING CORPORATION AND THOMAS WASSELL

(Filed September 14, 1973)

COME NOW Cox Broadcasting Corporation and Thomas Wassell, appellants in the above-styled action, and make and file this their Motion for Rehearing and Reargument of Sections III, IV and V of this Court's decision dated September 5, 1973, which sections are adverse to appellants. Appellants respectfully submit that this Court in said sections of its majority opinion has overlooked or erroneously construed and misapplied the controlling and applicable law and authorities in this Appeal in that:

(1) In Section III the majority erroneously held and stated:

> "This jurisdiction is not without precedent in the 'relational' area of the law. [Citing Bazemore, et al. v. Savannah Hospital, et al., 171 Ga. 257, 20 SE 2d, (1930)] . . . *Bazemore* said that the parents of the deceased infant had a cause of action against the newspaper because of its public disclosure which affected them, the parents. As we read *Bazemore*, how that public disclosure by the newspaper came about, whether by breach of contractual and ethical obligations or otherwise, was immaterial. A newspaper made a public disclosure concerning a deformed, deceased infant of surviving parents. Such disclosure allegedly affected the surviving parents in an adverse manner. The surviving parents' complaint properly stated a cause of action against the newspaper. In the case at bar we hold that the Appellee's complaint properly stated a cause of action, whether it be denominated 'relational' or not, against the Appellants."[1]

However, the majority overlooks and fails to cite controlling and applicable Georgia decisions involving parents' "relational" claims of invasion of privacy which expressly hold that there can be no cause of action for publications of matters of *public interest* or in connection with a *public investigation* relating to the death of a relative of the plaintiff. *Waters* v. *Fleetwood*, 212 Ga. 161 (1956), *Atlanta Journal Company* v. *Farmer*, 48 Ga. App. 273 (1934), *Pavesich* v. *New England Life Insurance Company*, 122 Ga. 190, 204 (1911), *Gouldman-Taber Pontiac, Inc.* v. *Zerbet*, 213 Ga. 682 (1957). The majority opinion's reliance on *Bazemore* v. *Savannah Hospital*, 171 Ga. 257 (1930), is unfounded in that *Bazemore* did not involve a matter

1. Majority Op. pp. 10, 12.

of legitimate or public concern and turned upon a breach of a contractual obligation of confidentiality.[2]

(2) In Section V the majority opinion erroneously disposes of "the head-on collision" between the First Amendment freedom of the press and the appellee's claimed invasion of privacy, holding and stating to wit:

> "There are a number of legitimate limitations on speech which are not proscribed by the First Amendment. These limitations are generally set forth by Professor Leflar in The Free-ness of Free Speech, 15 Vanderbilt L. Rev. 1073 (October, 1962). In that article the author discussed the freedom of speech requirement of the First Amendment, and he determined that this constitutional guarantee is not absolute. He further concluded that the court should weigh the conflicting societal values of the present day in reaching a decision as to whether the particular speech in issue is protected by the First Amendment . . . The Court in *Briscoe* [v. *Reader's Digest Assoc.*, 438 P. 2d 34 (1971)] then went on to say: 'But the rights guaranteed by the First Amendment do not require total abrogation of the right to privacy. The goal sought by each may be achieved with a minimum of intrusion upon the other.' We agree. First Amendment proscriptions do not bar the claim of the Appellee against the Appellants in this case."[3]

However, the majority has overlooked the unbroken line of controlling authority in which the United States Supreme Court, since 1964, has held that the news media is *constitutionally privileged* to publish *truthful accounts of matters of general or public concern,* for

2. See pp. 30-31 of Appellants' Brief.
3. Majority Op. pp. 14, 18.

which no criminal sanctions or civil damages may be imposed. See, e.g., *Rosenbloom* v. *Metromedia, Inc.*, 403 U.S. 29, 29 L.Ed. 2d 296 (1971); *Time, Inc.* v. *Hill*, 385 U.S. 374, 17 L.Ed. 2d 456 (1967); *New York Times Co.* v. *Sullivan*, 376 U.S. 264, 11 L.Ed. 2d 686 (1964); *Garrison* v. *Louisiana*, 379 U.S. 64, 13 L.Ed. 2d 125 (1964).

(3) In Section IV the majority opinion erroneously creates a new civil cause of action for truthful publications of newsworthy matters, allowing recovery for publications of such matters, when reasonable men would find the said publication . . . highly offensive, the majority holding and stating to wit:

> "And in formulating such an issue for determination by the fact-finder, it is reasonable to require the Appellee to prove that the Appellants invaded his privacy with wilful or negligent disregard for the fact that reasonable men would find the invasion highly offensive."[4]

However, such a holding completely overlooks and is contrary to controlling decisions of this Court and the United States Supreme Court which fully protect the publications of truthful accounts of matters of public interest or public investigation. *Pavesich* v. *New England Life Insurance Company*, 122 Ga. 190 (1911), the dissent having approvingly quoted from *Pavesich*, to wit:

> "The truth may be spoken, written, or printed about all matters of a public nature, as well as matters of a private nature in which the public has a legitimate interest."[5]

4. Majority Op. p. 13.
5. Dissenting Op. p. 2.

Waters v. *Fleetwood*, 212 Ga. 161 (1956); *Rosenbloom* v. *Metromedia, Inc.*, 403 U.S. 29, 29 L.Ed. 2d 296 (1971); *Time, Inc.* v. *Hill*, 385 U.S. 374, 17 L.Ed. 2d 456 (1967); *New York Times Co.* v. *Sullivan*, 376 U.S. 264, 11 L.Ed. 2d 686 (1964); *Garrison* v. *Louisiana*, 379 U.S. 64, 13 L.Ed. 2d 125 (1964).

Wherefore, appellants Cox Broadcasting Corporation and Thomas Wassell respectfully pray that this Court grant a rehearing and reargument as to Sections III, IV and V of its said decision of September 5, 1973, and that upon rehearing this Court remand this case to the lower Court with directions to grant the appellants' Motion for Summary Judgment for the reasons that appellee's complaint fails to state a cause of action, there being no relational right of privacy in Georgia when the publication involves matters of public or general concern or of a public investigation, and for the further reason that appellants' publication was privileged in that it related to a matter of public or general concern.

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/s/ John A. Pickens
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ON MOTION FOR REHEARING

The opinion of the Supreme Court of Georgia denying the appellants' Motion for Rehearing may be found in the appendix to the Jurisdictional Statement beginning at page A-24.